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might well be applied to such a case. The doctrine has been repeatedly confirmed. Its theory has been held to justify the regulation of rates of insurance, although an insurance company deals in personal contracts of indemnity instead of the manufacture, transportation, or sale of commodities. *German Alliance Insurance Company* v. *Supt. of Ins. of Kansas,* 233 U. S. 389. It would seem equally justifiable for the state to provide for the fixing of the terms of contract between the employer and the employee, when the object is to prevent the tying up of essential industries to the detriment of the people of a state. Other cases tending to support the use of the police power for this purpose are reviewed in "Police Power and the Kansas Industrial Court," 7 AM. BAR ASSN. JOURN. 415. The opinion of Justice Burch in *State* v. *Howat,* 109 Kan. 376, vividly portrays the real dangers sought to be met by the act. The fact that the general provisions of the act are to be executed in detail by a commission, called a court, rather than all prescribed in advance by the legislature, insures thoroughness and accuracy in their application. The fact that they are executed by such a commission rather than in all cases left to the more ponderous action of the courts insures swiftness and efficiency in emergencies. A critical examination of the law induces the belief that it is not only salutary but also constitutionally sound. C. E. B.

CONSTITUTIONAL LAW—REMOVAL TO FEDERAL COURTS BY FOREIGN CORPORATIONS.—The legal status of the foreign corporation under the federal Constitution has been shrouded in such uncertainty and perplexity during the past two decades that each pronouncement of the Supreme Court which tends to clarify the difficulty is more than welcome. In view of this situation the recent decision in the case of *Terral* v. *Burke Construction Company,* (1922), 42 Sup. Ct. 188, is particularly gratifying. The Burke Construction Company, a corporation organized under the laws of Missouri, had been licensed to do business in Arkansas. While engaged in business in the latter state it had removed a suit to the federal courts on the ground of diversity of citizenship. A statute of Arkansas provided, as a condition of doing business in the state, that the foreign corporation should not remove suits to the federal courts without the consent of the other party to the controversy, and that it should be the duty of the Secretary of State to revoke the license of any corporation which should violate this condition. Acting under this statute, Terral, the Secretary of State, was about to revoke the license. The company sought an injunction to prevent the revocation, contending that the statute was unconstitutional. The Supreme Court by a unanimous decision upheld the plaintiff's contention, saying, "A state may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the state, exact from it a waiver of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege of doing business because of the exercise of such right, whether waived in advance or not. (This principle) rests upon the ground that the federal Constitution con-

fers upon the citizens of one state the right to resort to the federal courts in another, that any state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void, because the sovereign power of a state in excluding foreign corporations, as in the exercise of all other sovereign powers, is subject to the limitations of the fundamental law."

This decision represents the culmination of a long series of cases dealing with substantially the same situation. It determines once and for all that a state has no power to deprive a foreign corporation of the privilege of removal which is conferred by the constitution.

The full significance of the opinion becomes evident only when it is considered in connection with the previously decided cases concerning the status of the foreign corporation. In 1839 in the pioneer case of *Bank of Augusta* v. *Earle,* 13 Pet. (U. S.) 519, Chief Justice Taney declared that the recognition to be accorded a foreign corporation in any state depended entirely upon the policy of comity adopted by that state, that any state could repudiate the principle of comity if it so desired, and *that it could not only refuse recognition to the foreign corporation but it could prevent its transacting any sort of business within its borders.* This principle was clearly restated in *Paul* v. *Virginia,* (1868) 8 Wall. (U. S.) 168, where it was also declared that *since the state could totally exclude the foreign corporation, permission to do business within the state could be granted upon any terms and conditions which the state might see fit to impose.* This doctrine giving to the state, as it did, absolute control over corporations fairly expressed the fear and distrust with which the people of the day regarded that relatively new "artificial being, invisible, intangible." The absolute and uncontrolled power of the states over the foreign corporation was for a time, at least, regarded as fully intrenched in our law.

But as the potentialities of the corporate form of organization became better understood, and as economic evolution demanded a wider field for commercial enterprise, a more liberal attitude toward corporations developed. National commercial expansion demanded modifications of the above doctrine. As a result, although the principle of *Paul* v. *Virginia* was adhered to, there appeared a number of well defined exceptions to or restrictions upon the original doctrine. Most of the cases illustrating these exceptions have been so thoroughly analyzed by Bowman in 9 MICH. L. REV. 549, and in Henderson's "POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW" that more than a passing reference to them would be useless repetition. However, a brief resumé of the more outstanding decisions will help complete the picture.

The first exception to make its appearance involved interstate commerce and took its force from the commerce clause. It was held that a state could not prevent a foreign corporation from carrying interstate commerce into the state by granting an exclusive monopoly to a domestic corporation doing business of the same kind. *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.* (1877), 96 U. S. 1. A second exception was introduced by a rather

strained construction of the impairment of contract clause. Colorado had admitted foreign corporations under a statute which declared that they should be subjected "to all the liabilities, restrictions and duties which are or may be imposed upon domestic corporations" of like kind. Subsequently the state sought to impose a license tax upon foreign corporations of just twice the amount of that imposed upon domestic corporations. It was held that the provisions of the law when the corporation entered the state amounted to a contract with the corporation which could not be impaired by the subsequent discriminatory tax. *American Smelting and Refining Co.* v. *Colorado* (1907), 204 U. S. 103. This case, however, has never been followed.

A third and really startling exception was pronounced by Chief Justice White in *Western Union Telegraph Co.* v. *Kansas* (1910), 216 U. S. 1. He declared that a state could not impose upon a foreign corporation conditions which would amount to a virtual expulsion, when the corporation had invested funds in the state in property of a permanent character, not adaptable to other kinds of business, and hence not disposable except at a great sacrifice. Such an arbitrary expulsion, he said, would be a taking of property without due process of law and a violation of the Fourteenth Amendment. A fourth exception was enunciated in *Southern Railway Co.* v. *Greene* (1910), 216 U. S. 400. It was there held that a foreign corporation which has once been admitted to the state, and which has acquired property therein, is a "person within the jurisdiction," and as such it may not be subjected to taxes not imposed upon like domestic corporations. Such a procedure, the court declared, would deny the corporation equal protection of the laws and be a violation of the Fourteenth Amendment. The principal case illustrates a fifth member of the family of exceptions. It determines decisively that a state may neither exact from the foreign corporation the waiver of its constitutional right to remove suits to the federal courts, nor expel it because it seeks to exercise that right. The foregoing cases indicate that the doctrine of *Paul* v. *Virginia* has been encroached upon in no small measure. It can no longer be truly said that a state may exclude, expel, or impose conditions at will. Its action is restrained by the expressed and implied limitations of the Constitution.

Of the foregoing exceptions, that illustrated by the principal case has had one of the most, if not the most, eventful career. It would seem that since the privilege of removal to the federal courts is conferred by the Constitution there should be an implied restriction upon any state action attempting to abridge or impair it. At an early date it was held that a state could not prevent a foreign corporation from exercising its privilege, even though it had contracted not to do so. *Insurance Co.* v. *Morse* (1874), 20 Wall. (U. S.) 445. But in spite of these considerations, when the question arose as to the power of the state to expel a corporation for removing a suit to the federal courts, it was held that the power existed. Under the spell of the doctrine of *Paul* v. *Virginia*, the court concluded that since the state could revoke the license of the foreign corporation at will, and without giving any reason for its action, the fact that it exercised its power for a

poor reason, namely, that the corporation had resorted to a constitutional privilege, was immaterial. *Doyle* v. *Insurance Company* (1876), 94 U. S. 535. Eleven years later the question arose again. This time it involved the constitutionality of an Iowa statute which provided that a foreign corporation, in applying for admission to the state, should file an agreement that it would not resort to the federal courts. R railroad had not filed the agreement and its agents were being prosecuted for violation of the statute. The court apparently completely reversed its holding in the *Doyle* case and held the statute unconstitutional. *Barron* v. *Burnside* (1887), 121 U. S. 186.

Then after a lapse of nineteen years the question arose once more. This time the statute directed the Secretary of State to revoke the license of any foreign corporation which should attempt to remove to the federal courts. The court once more virtually, although not expressly, reversed itself, and upheld the revocation of the license. It tried to distinguish the case of *Barron* v. *Burnside* on the ground that the statute there involved demanded an agreement in advance, whereas in the case under consideration no such agreement was exacted. In other words, the court said that although it was unconstitutional to require a waiver of the privilege as a condition precedent to entering the state, yet there could be no objection to requiring such a waiver as a condition of continuing business within the state. The distinction is shadowy, to say the least. So *Barron* v. *Burnside* was virtually overruled, and the *Doyle* case again represented the law of the court. *Security Mutual Life Insurance Co.* v. *Prewitt* (1906), 200 U. S. 446. However, the problem would not stay quiescent. Cases involving it kept arising, and subsequent decisions indicated a gradual drift in the reverse direction once more. None of them, however, were quite conclusive. In *Ludwig* v. *Western Union Tel. Co.*, 216 U. S. 146, the court enjoined the threatened revocation of the corporation's license because of removal to federal courts, but it did so, not because the state action was impairing a constitutional privilege, but because it would impose an unreasonable burden upon interstate commerce. Again, in *Herndon* v. *C., R. I. & Pac. Ry.*, 218 U. S. 135, a similar injunction was upheld, but this time on the ground that the foreign corporation had become a "person within the jurisdiction" and as such was entitled to equal protection of the laws.

The principal case, however, concludes the series in a most decisive fashion. It marks the third complete reversal of the Supreme Court on the question in issue. The cases of *Doyle* v. *Insurance Co.* and *Insurance Co.* v. *Prewitt* are expressly overruled. The decision is grounded squarely upon the theory that any state action which deprives a foreign corporation of the constitutional privilege is void, not because it interferes with interstate commerce or because it violates the Fourteenth Amendment, but because an implied restriction upon the states prevents them from curtailing privileges granted by the paramount power. The doctrine of *Paul* v. *Virginia* must yield to this extent. The wording of the decision is sufficiently conclusive so that this particular phase of the legal status of the foreign corporation may be considered settled.

E. B. S.